

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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| PAULINE CIABATTONI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 04-203 (GMS) |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

THE PARTIES' JOINT STATUS REPORT

Defendant, the United States of America, through undersigned counsel, and plaintiff,¹ through Richard A. Forsten, (collectively "the Parties"), hereby submit this Joint Status report in response to the Court's request of May 5, 2005. Accordingly, the Parties report as follows:

1. Plaintiff in this action, a landowner in Sussex County, filed this action in order to obtain an easement over an adjoining parcel of property owned by the Nature Conservancy at the time of the filing of the Complaint. On or about October 8, 2003, the Nature Conservancy transferred title to the property at issue to the United States of America. Thus, through this action, plaintiff seeks to obtain property rights over a parcel of land belonging to the United States.

2. The Complaint was originally filed in the Court of Chancery of the State of Delaware in and for Sussex County against the Nature Conservancy. Because it had taken title to the property at issue, the United States moved to substitute itself as the defendant in the action. The Court of Chancery granted the motion and substituted the United States for the Nature

¹ The *News Journal* reported in its Obituaries on May 11, 2004, that plaintiff had passed away. Plaintiff's counsel has reported that the property will pass to plaintiff's son who plans to continue the litigation. However, a motion to substitute party has not yet been filed.

Conservancy as the sole defendant. Once substituted, the United States removed this action to this Court.

3. On May 13, 2004, the United States filed its motion to dismiss or, in the alternative, for summary judgment.

4. After being contacted by the Department of Fish & Wildlife expressing interest in possibly purchasing the property at issue in this litigation, plaintiff's counsel suggested a temporary stay of the litigation in order to see if a deal could be worked out. Undersigned counsel agreed and, on June 2, 2004, the parties jointly filed a Stipulation with proposed Order staying proceedings for 120 days. The Court signed the order on June 7, 2004.

5. Pursuant to the June 7, 2004, Order, on September 14, 2004, the Parties reported to the Court on the ongoing possibility that the United States, or a private conservancy group sharing preservation interests with the United States, may purchase the real property at issue in this litigation, thus making this matter moot. The Parties reported that the Conservation Fund ("the Fund"), a conservancy group which shares preservation interests with the United States, is considering purchasing the plaintiff's real property at issue in this litigation. The Fund, the United States, and the plaintiff, were in the process of obtaining an appraisal of the property at issue. Once such an appraisal was obtained, the Parties expected that the Fund, if it deemed a purchase desirable, could make a potential offer for the property shortly thereafter.

6. Because the process to investigate and negotiate a possible settlement had taken longer than expected and some additional time was needed, on October 1, 2004, the Parties stipulated to an additional 90 day stay of litigation. The Court signed that Order on October 8, 2005.

7. On January 11, 2005, because additional time was still needed to survey the property and for the Parties to discuss possible outcomes, the Parties stipulated to an additional 180 day stay of litigation. Although the proposed Order was signed on January 13, 2005, the Court cut back the stay to 90 days and stated that no further extensions would be granted. Accordingly, the stay of litigation lapsed on or about April 13, 2005.

8. On May 5, 2005, the Court sent the parties a letter requesting that they, by May 19, 2005, submit a jointly prepared status report. This Joint Status Report is submitted in response to that request.

9. As set forth above, the plaintiff has been dealing with a conservancy group concerning the possible sale of the property at issue in this litigation. However, those conversations broke down on the issue of wetlands. The plaintiff engaged an environmental firm to flag the wetlands. Subsequently, the plaintiff engaged a surveying company to survey the wetlands. Unfortunately, despite plaintiff's best efforts, these matters have moved very slowly due to market conditions in Sussex County. It is plaintiff's understanding that the basic surveying work is now complete, and he expects a wetlands delineation within a week or so. Once plaintiff obtains such a delineation, depending on its results, the plaintiff intends to re-approach the conservancy group and attempt to re-start the negotiations on a possible sale. The intent would be that the conservancy group, if it purchased the property at issue, would donate or sell the property to the Bombay Hook preserve.

10. Based on the above, the plaintiff would like to obtain additional time to further pursue negotiations with the conservancy group. A successful conclusion to the negotiations would

conserve the resources of the Court and the Parties. The United States, whose motion to dismiss is still pending, does not oppose such a further extension.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May 2005, I electronically filed the attached JOINT STATUS REPORT with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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